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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. S-369

CHELSEA M. PONDERS
3141 Lamar Springs Ct.
Spring Valley, CA 91977

STATEMENT OF ISSUES

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs.

2. On or about May 1, 2006, the Respiratory Care Board of California, Department of Consumer Affairs received an application for a Respiratory Care Practitioner License from CHELSEA M. PONDERS (Respondent). On or about April 17, 2006, Chelsea M. Ponders certified under penalty of perjury to the truthfulness of all statements, answers, and representations in the application. The Board denied the application on August 9, 2006. On or about August 23, 2006, the Board received Respondent's letter requesting a hearing contesting the denial of her application for licensure.

JURISDICTION

3. This Statement of Issues is brought before the Respiratory Care Board (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 3710 of the Code states, in pertinent part: "The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act]."

5. Section 3718 of the Code states: "The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter."

6. Section 3732 of the Code states, in pertinent part:

". . .

"(b) The board may deny an application, or may order the issuance of a license with terms and conditions, for any of the causes specified in this chapter for suspension or revocation of a license, including, but not limited to, those causes specified in Sections 3750, 3750.5, 3752.5, 3752.6, 3755, 3757, 3760, and 3761."

7. Section 3750 of the Code states, in pertinent part:

"The board may order the denial, suspension or revocation of, or the imposition of probationary conditions upon, a license issued under this chapter, for any of the following causes:

". . .

"(d) Conviction of a crime that substantially relates to the qualifications, functions, or duties of a respiratory care practitioner. The record of conviction or a certified copy thereof shall be conclusive evidence of the conviction.

". . .

"(g) Conviction of a violation of any of the provisions of this chapter or of any provision of Division 2 (commencing with Section 500), or violating, or attempting to violate, directly or indirectly, or assisting in or

1 abetting the violation of, or conspiring to violate any provision or term of
2 this chapter or of any provision of Division 2 (commencing with Section
3 500).

4 “. . .”

5 8. Section 3750.5 of the Code states, in pertinent part:

6 "In addition to any other grounds specified in this chapter, the board may
7 deny, suspend, or revoke the license of any applicant or license holder who has done any
8 of the following:

9 "(a) Obtained or possessed in violation of law, or except as directed
10 by a licensed physician and surgeon, dentist, or podiatrist administered to
11 himself or herself, or furnished or administered to another, any controlled
12 substances as defined in Division 10 (commencing with Section 11000) of
13 the Health and Safety Code, or any dangerous drug as defined in Article 2
14 (commencing with section 4015) of Chapter 9.

15 ". . .

16 "(d) Been convicted of a criminal offense involving the
17 consumption or self-administration of any of the substances described in
18 subdivisions (a) and (b), or the possession of, or falsification of a record
19 pertaining to, the substances described in subdivision (a), in which event
20 the record of the conviction is conclusive evidence thereof.

21 ". . ."

22 9. California Code of Regulations (CCR) , title 16, section 1399.370,
23 states, in pertinent part:

24 “For the purposes of denial, suspension, or revocation of a license, a
25 crime or act shall be considered to be substantially related to the
26 qualifications, functions or duties of a respiratory care practitioner, if it
27 evidences present or potential unfitness of a licensee to perform the
28 functions authorized by his or her license or in a manner inconsistent with

1 the public health, safety, or welfare. Such crimes or acts shall include but
2 not be limited to those involving the following:

3 “(a) Violating or attempting to violate, directly or indirectly, or
4 assisting or abetting the violation of or conspiring to violate any provision
5 or term of the Act.

6 “. . .”

7 COST RECOVERY

8 10. Section 3753.5, subdivision (a) of the Code states, in pertinent part:

9 "In any order issued in resolution of a disciplinary proceeding before the
10 board, the board or the administrative law judge may direct any practitioner or applicant
11 found to have committed a violation or violations of law to pay to the board a sum not to
12 exceed the costs of the investigation and prosecution of the case. . . ."

13 11. Section 3753.7 of the Code states:

14 "For purposes of the Respiratory Care Practice Act, costs of prosecution
15 shall include attorney general or other prosecuting attorney fees, expert witness fees, and
16 other administrative, filing, and service fees."

17 12. Section 3753.1 of the Code states, in pertinent part:

18 "(a) An administrative disciplinary decision imposing terms of probation
19 may include, among other things, a requirement that the licensee-probationer pay the
20 monetary costs associated with monitoring the probation. "

21 FIRST CAUSE FOR DENIAL OF APPLICATION

22 (Conviction of a Crime)

23 13. Respondent's application is subject to denial under Code sections
24 3750(d), 3750(g), and CCR, title 16, section 1399.370(a), in that she was convicted of a
25 crime substantially related to the qualifications, functions, or duties of a respiratory care
26 practitioner. The circumstances are as follows:

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1 a. On or about June 8, 2006, before the Superior Court
2 of California, East County Division, Citation No. J13887, Respondent was
3 convicted on her own guilty plea of violating Vehicle Code section
4 23222(b) [driver in possession of marijuana] and was ordered to pay fines.

5 b. The circumstances of the conviction are as follows:
6 On or about March 30, 2006, Respondent was stopped by a La Mesa Police
7 Officer ("Officer"). Upon contact with Respondent, the Officer saw smoke
8 coming from inside of Respondent's vehicle. The Officer recognized the
9 smell as burning marijuana. Respondent was subsequently issued Citation
10 No. J13887 for violating Vehicle Code section 23222(b) [driver in
11 possession of marijuana].

12 SECOND CAUSE FOR DENIAL OF APPLICATION

13 (Conviction of a Crime Involving Possession of a Controlled Substance)

14 (Possession of a Controlled Substance)

15 14. Respondent's application is subject to denial under Code sections
16 3750.5(a), 3750.5(d), 3750(g), and CCR, title 16, section 1399.370(a), in that she was in
17 possession of a controlled substance, to wit: marijuana, and was convicted of that crime, as
18 more particularly described in paragraph 13, above, which is incorporated by reference as
19 if fully set forth herein.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters
22 herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

23 1. Denying the application of CHELSEA M. PONDERS for a
24 Respiratory Care Practitioner License;

25 2. Directing Chelsea M. Ponders to pay the Respiratory Care Board of
26 California the costs of the investigation and enforcement of this case, and if placed on
27 probation, the costs of probation monitoring;

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3. Taking such other and further action as deemed necessary and proper.

DATED: November 15, 2006

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant

SD2006801974
ponders.c.soi.wpd